

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

This case has previously been before the Board on different issues.<sup>2</sup> The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On August 25, 2010 appellant, then a 56-year-old administrative support assistant, filed a traumatic injury claim (Form CA-1) alleging that on August 6, 2010 he sustained a psychological injury as a result of being robbed at gunpoint walking to a satellite parking facility while in the performance of duty. OWCP assigned the claim OWCP File No. xxxxxx829. Appellant stopped work on August 10, 2010 and returned to modified employment on August 13, 2010.<sup>3</sup> He began working part-time modified employment on July 13, 2011.

By decisions dated October 18, 2010, OWCP denied appellant's claim, finding that he had removed himself from coverage under FECA when he left work two hours early. By decision dated January 3, 2012, it denied modification of the October 18, 2010 decision.

Appellant appealed to the Board. By decision dated January 11, 2013, the Board affirmed OWCP's January 3, 2012 decision.<sup>4</sup> The Board determined that appellant was on the premises of the employing establishment at the time of the robbery on August 6, 2010, but had not shown that he was engaged in a duty reasonably incidental to his employment.

On March 7, 2013 appellant requested reconsideration and submitted evidence demonstrating that he was on approved sick leave at the time of the August 6, 2010 robbery. By decision dated March 18, 2013, OWCP vacated its prior decision and accepted the claim for an aggravation of moderate, recurrent major depression and an aggravation of an unspecified anxiety disorder. It subsequently expanded acceptance of the claim to include post-traumatic stress disorder (PTSD).

OWCP further accepted that appellant sustained lumbar sprain and an aggravation of degenerative disc disease at L4-5 and L5-S1 due to a July 16, 2012 employment injury, assigned OWCP File No. xxxxxx517, and that he sustained lumbar sprain on October 31, 2018, assigned OWCP File No. xxxxxx954.

On April 25, 2017 appellant filed a notice of recurrence of a medical condition (Form CA-2a), alleging that on an unspecified date he sustained a recurrence of the need for medical treatment

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<sup>2</sup> Docket No. 18-0253 (issued August 2, 2018); Docket No. 12-1069 (issued January 11, 2013).

<sup>3</sup> In a decision dated January 29, 2015, OWCP denied appellant's request for wage-loss compensation from December 10 to 19, 2014 as the medical evidence failed to establish disability during this period. By decision dated April 17, 2015, it denied his claim for wage-loss compensation on February 23, 2015. In a decision dated June 20, 2016, OWCP denied appellant's claim for wage-loss compensation from April 25 to June 10, 2016. It noted that he had an accepted back condition that required him to work reduced work hours.

<sup>4</sup> *Supra* note 2.

causally related to his August 10, 2010 employment injury. He advised that he experienced anxiety and depression “having to drive every day past the area where the robbery occurred....”

By decision dated May 31, 2017, OWCP found that appellant had not established a recurrence of disability causally related to his accepted employment injury. On July 17, 2017 appellant requested reconsideration.

By decision dated September 21, 2017, OWCP denied modification of its May 31, 2017 decision. It advised that a claim for a recurrence of disability due to an emotional condition had to be filed as a new claim.

Appellant appealed to the Board. By decision dated August 2, 2018, the Board set aside the September 21, 2017 decision.<sup>5</sup> The Board found that appellant had not described additional occupational exposure as the cause of his current condition and thus did not have to file a new claim.<sup>6</sup>

In a report dated December 2, 2018, Dr. Richard Lightbody, a Board-certified psychiatrist and OWCP referral physician, diagnosed recurrent, moderate-major depressive disorder and chronic PTSD. He found that appellant was disabled from his usual duties, but could work four hours per day with restrictions.

On December 19, 2019 appellant filed a claim for compensation (Form CA-7) for 32 hours of disability from work for the period November 15 through 21, 2019. The employing establishment indicated that he had been working part time with restrictions since July 13, 2011.

By decision dated January 24, 2020, OWCP denied appellant’s claim for disability from November 15 through 21, 2019.

On January 29, 2020 appellant requested an oral hearing before a representative of OWCP’s Branch of Hearings and Review.

A telephonic hearing was held on May 28, 2020. Appellant advised that he worked six hours per day in modified employment due to his back injuries and received wage-loss compensation for two hours per day under a separate file number.

By decision dated August 12, 2020, OWCP’s hearing representative vacated the January 24, 2020 decision. He found that appellant had met his burden of proof to establish entitlement to wage-loss compensation from November 15 through 21, 2019. The hearing representative indicated that appellant had accepted claims for two back injuries, and instructed OWCP to administratively combine those claims with the current claim pursuant to its procedures. He further noted that appellant’s current limited-duty employment exceeded appellant’s restrictions of four hours per day found by Dr. Lightbody due to appellant’s emotional condition under the current file number. The hearing representative found that reports from appellant’s

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<sup>5</sup> *Supra* note 2.

<sup>6</sup> By decision dated November 30, 2018, OWCP found that appellant had not established a recurrence of disability causally related to his accepted employment injury as he had not factually established the alleged exposure.

attending physician, Dr. David Hahn, a Board-certified psychiatrist, were sufficient to establish that appellant was disabled from November 15 to 21, 2019 due to his accepted depression and PTSD.<sup>7</sup>

On February 12, 2021 Dr. Hahn opined that appellant was unable to work on February 9 and 10, 2021 “due to an exacerbation of [his] PTSD and depression.”

On February 12, 2021 appellant filed a Form CA-7 for disability from work on February 9 and 10, 2021. On the form, the employing establishment indicated that he was requesting compensation for 16 hours of leave without pay.

In a February 17, 2021 development letter, OWCP informed appellant of the definition of a recurrence of disability and requested that he submit additional factual and medical evidence, including a report from his physician explaining how his accepted condition worsened such that he was unable to work six hours per day of modified employment. It afforded him 30 days to submit the requested information.

Thereafter, OWCP received a February 10, 2021 telehealth report from Dr. Hahn. Dr. Hahn diagnosed moderate-major depressive disorder and PTSD and noted that appellant had restrictions of no contact with patients by person or telephone. He advised that appellant’s work caused stress that aggravated his PTSD and depression. Dr. Hahn noted that appellant’s stress had improved after his reassignment to a position with no patient contact. He indicated that appellant had missed the last two days of work due to depression. Dr. Hahn discussed appellant’s continued complaints of difficulty with appetite, concentration, and noted that appellant had anhedonia and crying spells. He found that appellant had restrictions of working six hours per day with no patient contact.

In a March 3, 2021 duty status report (Form CA-17), Dr. Hahn found that appellant could work six hours per day with restrictions.

On March 9, 2021 appellant asserted that he had missed work on February 9 and 10, 2021 because he was unable to get up after “having a bad night.” He noted that he had difficulty sleeping and waking up.

A March 11, 2021 rating decision from the Department of Veterans Affairs (DVA) found that appellant had 70 percent disability due to major depression with generalized anxiety disorder claimed as PTSD effective September 10, 2015 and also disability due to a spinal condition.<sup>8</sup> The DVA indicated that he had been in military service from September 1971 to July 1974.

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<sup>7</sup> Upon return of the case record to the district office, OWCP administratively combined OWCP File Nos. xxxxxx517 and xxxxxx954 with the current claim, OWCP File No. xxxxxx829. OWCP File No. xxxxxx517 serves as the master file.

<sup>8</sup> On March 30, 2021 appellant requested that his claim under OWCP File No. xxxxxx829 be closed as he was receiving disability from the DVA.

By decision dated March 22, 2021, OWCP denied appellant's claim for disability from work for the period February 9 through 10, 2021.

On April 1, 2021 appellant requested reconsideration. He submitted an August 16, 2016 report from Dr. Anthony M. Mancini, a clinical psychologist, relevant to his DVA claim.

By decision dated June 4, 2021, OWCP denied modification of its March 22, 2021 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim including the fact that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>9</sup>

Under FECA, the term disability means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>10</sup> Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.<sup>11</sup> An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.<sup>12</sup> When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his or her employment, he or she is entitled to compensation for loss of wages.<sup>13</sup>

### **ANALYSIS**

The Board finds that appellant has not met his burden of proof to establish that he was disabled from work for the period February 9 through 10, 2021 causally related to his accepted August 6, 2010 employment injury.

In a February 10, 2021 telehealth report, Dr. Hahn indicated that appellant had missed the preceding two days of work as a result of his depression. He noted that appellant had difficulty with concentration, appetite, and emotional control. Dr. Hahn diagnosed recurrent moderate-major depressive disorder and PTSD and determined that appellant had restrictions of working six hours per day with no patient contact. He did not, however, provide objective findings supporting disability or explain why appellant's accepted condition worsened such that he could no longer

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<sup>9</sup> A.R., Docket No. 20-0583 (issued May 21, 2021); S.W., Docket No. 18-1529 (issued April 19, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994).

<sup>10</sup> 20 C.F.R. § 10.5(f); *see J.M.*, Docket No. 18-0763 (issued April 29, 2020); *Bobbie F. Cowart*, 55 ECAB 746 (2004).

<sup>11</sup> *D.W.*, Docket No. 20-1363 (issued September 14, 2021); *L.W.*, Docket No. 17-1685 (issued October 9, 2018).

<sup>12</sup> *See M.W.*, Docket No. 20-0722 (issued April 26, 2021); *D.G.*, Docket No. 18-0597 (issued October 3, 2018).

<sup>13</sup> *See A.R.*, *supra* note 9; *D.R.*, Docket No. 18-0323 (issued October 2, 2018).

perform the duties of his modified position.<sup>14</sup> The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/disability was related to employment factors.<sup>15</sup> Consequently, Dr. Hahn's report is insufficient to meet appellant's burden of proof to establish his claim.

On February 12, 2021 Dr. Hahn opined that appellant was unable to work on February 9 and 10, 2021 as a result of an exacerbation of depression and PTSD. He did not, however, directly attribute the disability to the accepted employment injury or provide any rationale for his findings. Dr. Hahn further did not address appellant's history of preexisting depression and PTSD due to appellant's military service. The Board has held that a medical report is of limited probative value on a given medical issue if it contains an opinion which is unsupported by medical rationale.<sup>16</sup> Further, the Board has consistently held that complete medical rationalization is particularly necessary when there is a preexisting condition,<sup>17</sup> and has required medical rationale differentiating between the effects of the work-related injury and the preexisting condition in such cases.<sup>18</sup> Therefore, Dr. Hahn's February 12, 2020 report is also insufficient to establish appellant's claim.

As appellant has not submitted any rationalized medical evidence establishing disability from work for the period February 9 through 10, 2021 causally related to his accepted August 6, 2010 employment injury, he has not met his burden of proof.

Appellant may submit new evidence or argument, with a written request for reconsideration, to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish that he was disabled from work for the period February 9 through 10, 2021 causally related to his accepted August 6, 2010 employment injury.

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<sup>14</sup> See *D.K.*, Docket No. 21-0082 (issued October 26, 2021).

<sup>15</sup> See *Y.D.*, Docket No. 16-1896 (issued February 10, 2017) (finding that a report is of limited probative value regarding causal relationship if it does not contain medical rationale describing the relation between work factors and a diagnosed condition/disability). See also *J.M.*, Docket No. 16-0306 (issued May 5, 2016).

<sup>16</sup> *B.H.*, Docket No. 19-1341 (issued August 12, 2020).

<sup>17</sup> See *V.S.*, Docket No. 20-1034 (issued November 25, 2020); *P.W.*, Docket No. 20-0407 (issued July 17, 2020).

<sup>18</sup> *Id.*; see also *A.J.*, Docket No. 18-1116 (issued January 23, 2019); *M.F.*, Docket No. 17-1973 (issued December 31, 2018); *J.B.*, Docket No. 17-1870 (issued April 11, 2018).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 4 and March 22, 2021 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 28, 2022  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board